

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

WESTERN CHALLENGER, LLC, an Alaska  
limited liability company,

Plaintiff,

vs.

DNV GL GROUP, a foreign corporation, DON  
SEYMOUR, and PHIL ESSEX,

Defendants.

IN ADMIRALTY

Case No.

**COMPLAINT FOR NEGLIGENCE AND BREACH OF CONTRACT**

COMES NOW Plaintiff Western Challenger, LLC, an Alaska limited liability company by and through counsel Holmes Weddle & Barcott, PC and complains against Defendants Don Seymour, Phil Essex, and DNV GL Group, which upon information and belief, is the successor by merger to Det Norske Veritas and Germanischer Lloyd (“DNV-GL”) as follows:

**I. JURISDICTION AND VENUE**

COMPLAINT FOR NEGLIGENCE AND  
BREACH OF CONTRACT - 1  
*Western Challenger v DNV GL Group*

**HOLMES WEDDLE & BARCOTT, A  
PROFESSIONAL CORPORATION**  
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ANCHORAGE, AK 99501-3408  
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1. Exhibit A. DNV-GL later produced a different certificate, also dated June 10, 2013,  
2. with an ITC tonnage measurement of 191 ("Second Certificate") attached hereto as  
3. Exhibit B, and a second dated August 30, 2013 with an ITC tonnage measurement of  
4. 227 ("Third Certificate") attached hereto as Exhibit C.

5. 7. According to federal regulations, any ITC tonnage measurement exceeding  
6. 200 would make the Vessel ineligible to receive a coastwise endorsement necessary for  
7. its work as a fish tender.

8. 8. Upon receipt by Plaintiff of the First Certificate, and concerned that the  
9. tonnage number was too high for documentation of the Vessel with a coastwise  
10. endorsement, Plaintiff contacted DNV-GL. Seymour assured Plaintiff that the problem  
11. could be solved.

12. 9. To address the problem, Seymour consulted with his supervisor at DNV-GL,  
13. Phil Essex ("Essex"), who retracted the First Certificate and substituted the Second  
14. Certificate. The Second Certificate was received by the Coast Guard on or about June  
15. 20, 2013.

16. 10. DNV-GL submitted the Third Certificate to the Coast Guard, which was  
17. received by the Coast Guard on or about September 20, 2013.

18. 11. The U.S. Coast Guard refused to document the Vessel.

19. 12. In an e-mail of October 18, 2013, Mr. Essex explained that the Second  
20. Certificate was issued to enable the Vessel's re-documentation as a U.S. flag vessel.  
21. Essex claimed that the Third Certificate was intended to be submitted to reflect certain  
22. modifications to the Vessel after the Second Certificate was issued by DNV-GL. In  
23. fact, no such modifications were made to the Vessel.  
24.

1. 13. Despite demand, DNV-GL has declined to provide the calculations used to  
2. create the tonnage certificates or any documentation with respect to the purported  
3. modifications.

4. 14. Plaintiff was able to secure the passage of special legislation to grant the  
5. Vessel a coastwise endorsement. The legislation was approved by Congress on  
6. December 18, 2014; however, the Coast Guard refused to make the exception, due to its  
7. continuing concerns about the veracity of the conflicting DNV-GL tonnage certificates.  
8.

9. **III. CAUSE OF ACTION – NEGLIGENCE**

10. 15. Plaintiff realleges the foregoing paragraphs and incorporates them herein by  
11. reference.

12. 16. Plaintiff hired Seymour and DNV-GL to provide advice and measurement  
13. services which are within their regular professional duties. The Defendants provided  
14. false information to Plaintiff regarding, among other things, the necessity of altering the  
15. Vessel to comply with Coast Guard requirements.

16. 17. Vessel owners routinely rely upon the information and advice provided by  
17. classification societies such as DNV-GL and their agents in this type of transaction. In  
18. addition, Plaintiff made it clear that the decision to purchase the Vessel would be based  
19. on defendants' advice as to the viability of re-flagging and documenting the Vessel for  
20. service as a fish tender.

21. 18. The Defendants failed to exercise reasonable care in advising Plaintiff,  
22. assessing the Vessel, and submitting documentation to the Coast Guard.

23. 19. Plaintiff relied upon the information provided by Defendants in making its  
24. decision to buy the Vessel, in contracting and paying for the recommended  
25.

1. modifications, and in making tendering commitments for the Vessel.

2. 20. Plaintiff suffered pecuniary loss of approximately \$50,000 paid for  
3. construction fees, moorage fees and fees to Defendants in connection with unnecessary  
4. modifications to the Vessel  
5.

6. **IV. CONCLUSION**

7. **WHEREFORE**, Plaintiff prays for judgment as follows:

8. 1. For a judgment against Defendant for damages of approximately \$50,000,  
9. the exact amount to be proven in court, incurred by Plaintiff in modifying the Vessel in  
10. reliance upon Defendants' advice.

11. 2. For a judgment against Defendants for damages in excess of \$500,000, the  
12. exact amount to be proven at trial, for lost income due to Plaintiff's inability to perform  
13. the tendering services for which it was contracted.

14. 3. For an award of attorney's fees, as provided by statute or under Alaska  
15. Civil Rule 82.

16. 4. For an award of such other and further relief as in law and equity Plaintiff  
17. may be entitled to receive.  
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1. DATED this 15<sup>th</sup> day of June, 2016.

2. HOLMES WEDDLE & BARCOTT,  
3. A PROFESSIONAL CORPORATION

4.  
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12. Attorney for Plaintiff

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